IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 39 of 2007
With
CIVIL APPLICATION No. 1540 of 2007
In
APPEAL FROM ORDER No. 39 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HIMANSHU BHAGWANBHAI PATEL
Versus
GULAM HUSSAIN MEHMOOD BOBAT AND ANOTHER

==========

Appearance :
MR ARPIT A KAPADIA for Appellant.
UNSERVED-REFUSED (N) for Respondent No.1.
NOTICE NOT RECD BACK for Respondent No.2.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/02/2007

ORAL JUDGMENT

Mr.A.G.Vyas states that he has received instructions to appear in

this matter and he will file his Vakalatnama on behalf of the respondents.

2) ADMIT. Mr.A.G.Vyas, learned advocate waives service of admission on behalf of the respondents. With the consent of the parties, this matter is taken up for final hearing today.

3) The appellant is the original plaintiff of Special Civil Suit No.126/2005. Aforesaid suit is filed for specific performance of the suit agreement. In the said suit, the plaintiff preferred an application for interim injunction at Exh.5 restraining the defendants from transferring or alienating the suit property. By a detailed order, learned trial Judge has rejected said injunction application and found that the plaintiff has no prima facie case. Learned trial Judge has not passed any order as to costs while rejecting interim injunction application at Exh.5.

4) When Exh.5 application was pressed into service for interim order, learned trial Judge granted an order of status quo and, at that time, the Court had observed that the plaintiff should produce surety that if the plaintiff is unable to prove his case, he will pay damages to the defendants to the tune of Rs.50,000/-. It means that at the time of granting ad-interim order of status quo, learned trial Judge has taken surety of Rs.50,000/-, however, in the final order, learned trial Judge has observed “no order as to costs” nor other side has made any prayer that they have suffered damages and order of costs may be passed in view of earlier ad-interim order.

5) Considering the said aspect of the matter and especially when learned trial Judge has not granted any damages while disposing Exh.5 application and when learned advocate for the respondents, Mr.Vyas,

fairly submitted that, trial Court has not granted any order as to costs, surety given by the plaintiff is required to be discharged. Accordingly, the surety given by the plaintiff shall stand discharged in view of the final order passed in Exh.5 application. Accordingly, this Appeal from Order is disposed of in aforesaid terms without any order as to costs.

6) It is clarified that the observations made by the trial Court while deciding Exh.5 application is to be treated tentative in nature and, ultimately, the suit is required to be decided on its own merits.

7) In view of above order on main appeal, no order on Civil Application No.1540 of 2007.

8) Writ to be sent to the trial Court forthwith.

(P.B.Majmudar, J.)

/malek